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July 16, 1996

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: CC Docket No. 92-77  
Comments of Operator Service Company On the  
Commission's Second Notice of Proposed Rulemaking

Dear Mr. Caton:

Enclosed for filing are the original and nine (9) copies of the Comments of Operator Service Company for the Commission's Second Further Notice of Proposed Rulemaking in CC Docket No. 92-77.

Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for this purpose.

Questions regarding this filing may be directed to me at (407) 740-8575.

Yours truly,

Nanci Adler  
Consultant to OSC

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cc: K. Smith, OSC  
FCC Contractor, ITS  
FCC Enforcement Division(2 copies)  
Adrien Auger, FCC Common Carrier Bureau (diskette)

to file: OSC-FCC

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 17 1996

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In the Matter of  
Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77

COMMENTS OF  
OPERATOR SERVICE COMPANY

ON THE COMMISSION'S  
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Operator Service Company  
5302 Avenue Q  
Lubbock, Texas 79412

(800) 658-6041

Dated: July 16, 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
Billed Party Preference )  
for 0+ InterLATA Calls ) CC Docket No. 92-77  
)

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

**COMMENTS OF  
OPERATOR SERVICE COMPANY**

Operator Service Company ("OSC") hereby submits the following comments regarding the Commission's Second Further Notice of Proposed Rulemaking.

**I. SUMMARY**

The current laws and regulations pertaining to operator services providers (i.e. call branding, posting of notice information and non-blocking requirements) provide sufficient consumer protection in today's market. However, if the Commission seeks to impose further consumer protection regulations, OSC supports the Commission's proposal to require audible rate quotes. To adequately protect consumer interests and ensure a fair and competitive marketplace, this rate quote requirement must be imposed *across-the-board on all providers* of operator services.

The determination and implementation of a fair and reasonable benchmark rate is difficult at best. Audible rate quotes obviate the need for the Commission to take this problematic course of

action. However, in the event that the Commission finds that a benchmark rate is to be determined (above which an audible rate quote is required) the bench mark should not be determined as a percentage rate above the rates of the largest carriers and revised yearly based on these carriers' rates. The benchmark should be at commission-specified rates set forth by commission order and adjusted only for economic factors such as inflation.

## **II. RATE DISCLOSURE**

Audible rate disclosure on all operator assisted calls will ensure that consumers have the information they need to make an informed decision. The Commission's rules should specifically permit the use of live or automated audible quotes and require no other information other than the rate quote so that call set-up time is kept to a minimum.

An audible rate announcement will prepare consumers for the charges associated with the call and will allow them to decide whether to place the call at all, how long to talk, or if they should place the call using another carrier.

A rate quote requirement for all carriers will be simple to monitor for regulatory compliance purposes and thus keep the costs associated with enforcement to a minimum. In addition, the reduced number of consumer complaints (since consumers will always be informed of the costs incurred before they are billed) will result in a further reduction of regulatory costs for both regulatory

agencies and carriers.

To allow for the technical development and implementation of the audible quote, the Commission should institute a phase-in period at the end of which all OSPs would be required to comply with this requirement. OSPs are already required to provide rate quotes upon request. Although additional software modifications would be necessary to implement the audible rate quote, OSC believes that the costs of such implementation will not be unreasonable or unduly burdensome.

For these reasons, if the Commission finds that additional consumer protection beyond today's laws and regulations is necessary, it should adopt audible rate quotes on all operator assisted calls.

### **III. IMPOSITION OF A RATE BENCHMARK IS PROBLEMATIC**

Imposition of a benchmark rate, above which the audible rate quote would be required, creates many difficult issues. A benchmark rate must take into consideration the costs of providing service, yet no cost data has been provided to make this determination. Further, the cost of providing service must include marketing and sales costs, including commissions to the providers of equipment where operator calls are placed, and must consider legitimate cost differentials among carriers.

The benchmark should not be based on the rates of specific carriers. If the benchmark is based on the rates of individual carriers, it gives these carriers the opportunity to engage in

anti-competitive behavior and predatory pricing. The carriers on which the benchmark is based could use this power to lower rates below costs in an effort to eliminate competitors.

The creation of a benchmark based on consumer expectations is also flawed. Most consumers have little or no idea what rates are charged by AT&T, MCI or Sprint for operator assisted calls. Their expectations rely not on the actual rates charged by these carriers, but on the fact that they are using a "brand name" carrier with whom they are familiar and generally trust. Consumers are probably not aware of AT&T's price increases over the past year for operator assisted calls (both for usage rates and per-call service charges). Their expectations for rates charged by AT&T have not changed along with these price increases - consumers are simply comfortable with the choice of using AT&T because of the company's name recognition and longevity in the business.

It makes considerably more sense to impose an audible rate quote on all carriers than to establish a false and arbitrary benchmark rate used to determine who should provide an audible quote and who should not. This is particularly true if the benchmark can be manipulated by industry players.

#### **IV. DETERMINATION OF RATE BENCHMARKS**

In the event that the Commission determines a benchmark is necessary, two significant items must be addressed in addition to the actual rate level itself: 1) the Commission must specifically define the services subject to the benchmarks; and 2) how the

benchmark can be modified in the future to account for changes in technology and economic factors (i.e. inflation or costs).

#### Services Subject to the Benchmark

The commission's proposal to set a benchmark based on reasonable expectations of consumers is valid, however the benchmark should not be tied to the rates of AT&T, MCI, Sprint or any other carrier - either directly or as a percentage above their rates. First, determining the average rate for a call is difficult using various carrier's rate structures and the variations on applicable operator service charges. The number of iterations possible seem endless - AT&T's interstate tariff contains thirteen (13) different usage rate schedules and eleven (11) different per-call service charge categories for domestic operator assisted calls.<sup>1</sup> MCI and Sprint's interstate tariffs contain a similar wide variety of operator service rates.

To alleviate this problem, the Commission's benchmark should consist of a single usage-sensitive rate schedule for all types of operator assisted calls, and should define specific rate categories for per-call service charges. The per-call service charges should be clearly defined and include the following standard offerings:

- 1) automated customer dialed calling card;
- 2) operator assisted station calls, including collect and third party-billed calls, as well as operator assisted calls billed to a calling card; and

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<sup>1</sup> Tariff FCC No. 27, Sections 24.1.1.A and 24.A.5.C

3) calls placed on a person-to-person basis.

Secondly, by defining specific service categories, the Commission will allow continued service and technological innovation, which would otherwise be stifled if the benchmark applied to all operator assisted calls, regardless of the value-added services offered. Services offered outside of the defined standard operator assisted services should not be considered part of the benchmark. For example, MCI's value-added "Specific Language Speaking Operator" service and associated service charge would not be included in the benchmark.<sup>2</sup>

Industry players, including regulators, cannot foresee the technology and service advancements that may occur in the decades to come. Future service enhancements or value-added features should not be stifled as a result of price caps established in today's market. If a carrier develops an optional enhanced operator assisted service which provides customers with additional value, the carrier should not be forced to price the service at or below an inappropriate benchmark. If this were the case, such service innovations will not occur.

#### Structure of the Benchmark

The benchmark rate must also be logical and easy to follow. There are two basic cost elements in operator assisted calls. The

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<sup>2</sup> MCI Telecommunications Corporation Tariff FCC No. 1, Section 3.02.0243, Page 19.1.2.



first cost is a fixed and is based on such costs as operator handling, billing and collection, and validation. The second cost element is the usage sensitive charges associated with use of the network (i.e. per-minute long distance and access charges). The typical method for recovering these costs in a logical manner is to load the fixed costs into the initial minute of the call or to add a fixed service charge - both accomplish the same end. The per-minute usage charge then applies to each minute the call is connected.

There is no basis for varying the per-minute usage charge for the call over the duration of the call, as the CompTel proposal recommended. OSC recommends that the Commission adopt a rate ceiling formula that is in keeping with the current industry standard of using per-minute service charges and constant usage rates beyond the first minute.

OSC's proposed structure eliminates problems associated with tying rates to specific carriers' rates and service descriptions. Further, it removes variations that may occur as a result of individual specific carriers' marketing and pricing strategies.

#### The Benchmark Level

Using current industry rates and consumer expectations as a foundation, OSC recommends the following rate ceiling for operator assisted calls:

Per Call Service Charges

Automated Customer Dialed Calling Card:	\$2.50
Station-to-Station:	\$3.75
Person-to-Person:	\$4.75

<u>Per Minute Usage Rate:</u>	\$0.35
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These rates would result in maximum charges for a six minute industry average call of \$4.60 for an automated customer dialed calling card call; \$5.85 for a station-to-station call; and \$6.85 for a person-to-person call.

In this proposed structure, the per-call service charges reflect the costs associated with the initial set-up of calls (the operator intervention, validation, and per-message billing costs). The proposed usage rate does not vary since there is no cost differential based on duration of call. In addition, the flat rate non-mileage sensitive per-minute rate reflects the fact that usage costs of providing service are generally not mileage sensitive. In this day of inexpensive digital transmission, mileage costs are generally not a factor.

Annual Inflation Adjustment.

A rate ceiling which establishes fixed rates in today's dollars should have an automatic mechanism for annual adjustments which reflect the rate of inflation. Although today's environment is one of low inflation, economic changes are inevitable. An automatic annual adjustment factor will ensure that the rate ceiling does not become ludicrous in a future economic environment. This adjustment could be based on the Consumer Price Index or the

Gross Domestic Product Implicit Price Deflator. This adjustment could be made each December 1 and the new rate level becomes effective each January 1.

#### Proposed Benchmark Percentage

The proposed benchmark rate of 15% above the average of AT&T, MCI and Sprint rates does not provide sufficient allowances for differences in carriers' costs. In addition to all of the problems associated with using other carriers' rates to determine the benchmark, the 15% margin is not wide enough to fairly cover carriers' whose costs vary significantly from those of the three largest carriers. Even AT&T changes its prices by more than 15% in a single tariff revision. For example, this year AT&T raised its automated calling card rate from \$0.80 to \$1.00 per call - a 25% price increase, and subsequently increased the commercial credit card rate from \$1.00 to \$1.50 - an additional 50% increase.<sup>3</sup>

Without knowing AT&T, Sprint and MCI's costs of providing operator assisted services, and without knowing the costs incurred by competing carriers, the Commission must establish a pricing margin significantly broader than 15%. For example, the Nevada Public Service Commission staff uses a benchmark based on rates 150% higher than the average of the three largest carriers to determine if rates are reasonable. This benchmark provides room for those carriers whose costs of providing service differ widely from the large carriers.

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<sup>3</sup> AT&T Tariff FCC No. 1, page 24-9 effective June 19, 1996.

Finally, if a benchmark uses the rates of specified carriers, it should be based on the highest rate of the carriers, for example: "x% above the highest rates of AT&T, Sprint or MCI's rates". This will at least reduce the likelihood of predatory pricing unless the three carriers are acting collusively.

## **V. CONCLUSION**


Audible disclosure of rates is most effective means of ensuring that consumers make informed decisions. This fair and straightforward requirement will satisfy the goals of this Commission proceeding. Imposing this requirement on all providers of operator assisted services eliminates the difficult, if not insurmountable, issues associated with determining a fair and reasonable benchmark.

Determining a benchmark rate is difficult at best, and sets forth an artificial market mechanism that can be abused. Furthermore, determining whether carriers comply with an audible rate quote will be much easier than trying to determine compliance with a combined benchmark/rate quote scheme.

In the event that the Commission decides to impose a benchmark, the services covered by the benchmark must be well-defined so that future innovation is not stifled. The benchmark should not be determined by any specific carriers' rates, but should be set forth by Commission order. Further, it should be in a logical structure, including a per-call service charge depending

upon the amount and type of operator intervention and a flat rated per-minute usage rate.

Respectfully submitted this 16<sup>th</sup> day of July, 1996.

  
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